

CIVIL NO. 1:05CV338

Defendants.

ORDER

Plaintiffs' complaint arises out of circumstances surrounding the response to a domestic dispute by the Defendant Sheriff's Department, and the shooting of Plaintiff Darrell Buchanan in the left hip by Defendant

Eddie Hughes, a deputy sheriff with the Avery County Sheriff's Department. **See generally, Complaint, filed October 17, 2005, General Court of Justice, Superior Court Division of Avery County, North Carolina, attached to Defendant's Verification of Filing of Notice of Petition for Removal in State Court, filed November 17, 2005, at 12-14.**

As a result of these events, the Plaintiffs allege causes of action for assault, unlawful search and seizure, negligence, intentional and negligent infliction of emotional and mental distress, failure to properly supervise as to the Defendants Avery County and the Sheriff's Department, and civil conspiracy. *Id.*, at 14-19. The Defendants duly answered the complaint after the case was removed to this Court and the parties engaged in discovery as outlined in the Pretrial Order and Case Management Plan. Defendants timely filed their dispositive motion and Plaintiffs have failed to file response. **See, Pretrial Order and Case Management Plan, filed December 19, 2005, at 3.**

II. DISCUSSION

Rule 56(e) of the Federal Rules of Civil Procedure provides:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. *If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.*

Fed. R. Civ. P. 56 (emphasis added).

The Court has reviewed the pleadings herein and, in absence of any response to the contrary from the Plaintiffs, finds that the Defendants' motion is well taken and should be granted.

III. ORDER

IT IS, THEREFORE, ORDERED that the Defendants' motion for summary judgment is **ALLOWED**; a Judgment is filed herewith.

Signed: July 31, 2006



Lacy H. Thornburg
United States District Judge

